

§ 411.37

§ 411.37 Amount of Medicare recovery when a primary payment is made as a result of a judgment or settlement.

(a) *Recovery against the party that received payment*—(1) *General rule.* Medicare reduces its recovery to take account of the cost of procuring the judgment or settlement, as provided in this section, if—

(i) Procurement costs are incurred because the claim is disputed; and

(ii) Those costs are borne by the party against which CMS seeks to recover.

(2) *Special rule.* If CMS must file suit because the party that received payment opposes CMS's recovery, the recovery amount is as set forth in paragraph (e) of this section.

(b) *Recovery against the primary payer.* If CMS seeks recovery from the primary payer, in accordance with § 411.24(i), the recovery amount will be no greater than the amount determined under paragraph (c) or (d) or (e) of this section.

(c) *Medicare payments are less than the judgment or settlement amount.* If Medicare payments are less than the judgment or settlement amount, the recovery is computed as follows:

(1) Determine the ratio of the procurement costs to the total judgment or settlement payment.

(2) Apply the ratio to the Medicare payment. The product is the Medicare share of procurement costs.

(3) Subtract the Medicare share of procurement costs from the Medicare payments. The remainder is the Medicare recovery amount.

(d) *Medicare payments equal or exceed the judgment or settlement amount.* If Medicare payments equal or exceed the judgment or settlement amount, the recovery amount is the total judgment or settlement payment minus the total procurement costs.

(e) *CMS incurs procurement costs because of opposition to its recovery.* If CMS must bring suit against the party that received payment because that party opposes CMS's recovery, the recovery amount is the lower of the following:

(1) Medicare payment.

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(2) The total judgment or settlement amount, minus the party's total procurement cost.

§ 411.39 Automobile and liability insurance (including self-insurance), no-fault insurance, and workers' compensation: Final conditional payment amounts via Web portal.

(a) *Definitions.* For the purpose of this section the following definitions are applicable:

Applicable plan means the following laws, plans, or other arrangements, including the fiduciary or administrator for such law, plan or arrangement:

(1) Liability insurance (including self-insurance).

(2) No fault insurance.

(3) Workers' compensation laws or plans.

Medicare Secondary Payer conditional payment information means all of the following:

(1) Dates of service.

(2) Provider names.

(3) Diagnosis codes.

(4) Conditional payment amounts.

(5) Claims detail information.

(b) *Accessing conditional payment information through the Medicare Secondary Payer Web portal*—(1) *Beneficiary access.* A beneficiary may access his or her Medicare Secondary Payer conditional payment information via the Medicare Secondary Payer Recovery Portal (Web portal), provided the following conditions are met:

(i) The beneficiary creates an account to access his or her Medicare information through the CMS Web site.

(ii) The beneficiary provides initial notice of a pending liability insurance (including self-insurance), no-fault insurance, or workers' compensation settlement, judgment, award, or other payment to the appropriate Medicare contractor at least 185 days before the anticipated date of settlement, judgment, award, or other payment.

(2) *Beneficiary's attorney or other representative, or applicable plan's access on or before December 31, 2015.* On or before December 31, 2015, a beneficiary's attorney or other representative or an applicable plan, may do the following:

(i) View the following via the Medicare Secondary Payer Recovery Portal (Web portal):